

December 12, 2003

Dr. Lester M. Crawford
Deputy Commissioner
Food and Drug Administration
Parklawn Building, Mail Stop HF-1
Room 1471
Rockville, Maryland 20857

Dear Dr. Crawford:

On behalf of the National Restaurant Association, we would like to take this opportunity to thank you and your senior FDA staff for meeting with Association staff and chain restaurant executives on December 2, 2003. We greatly appreciate you all taking the time out of your busy schedules to listen to our suggestions regarding the FDA's Obesity Working Group recommendations to be issued in February 2004. We were pleased to hear that you recognize that restaurants are not to blame for this issue. However, we fully recognize the importance of this effort and believe we must work cooperatively to successfully address the complexities of the obesity issue facing our nation today.

Founded in 1919, the National Restaurant Association is the leading business association for the restaurant industry. Together with the National Restaurant Association Educational Foundation, the Association's mission is to represent, educate and promote an industry that is comprised of over 870,000 restaurant and foodservice outlets employing more than 11.7 million people, making us the largest private sector employer in the country. As such, diversity, customer service and high quality foods are top priorities for the ever-growing restaurant industry .

Today in the restaurant industry, we see more diet-specific requests, such as low-carbohydrate, low-fat, and fiber-rich items and have provided these items on menus nationwide. Choice and consumer customization are restaurant foundations for providing the options that consumers who are watching their intake of certain nutrients demand. The confluence of dietary habits and customization of menu items that takes place every day puts restaurants on the cutting-edge of consumer interest in tailoring diets to complement health objectives. Fully understanding the dynamics of restaurant consumer drivers affecting them prior to a restaurant visit is important.

Most restaurants offer market-driven solutions such as special menu items and items upon request for those consumers watching their calorie, fat, or other nutrient intake. Many in the industry also provide nutritional information in brochures and on Web sites, and some are expanding existing programs or developing new initiatives to assist consumers with living a healthy lifestyle. The

restaurant industry is clearly one of the most consumer-driven industries in existence today. We must give consumers the food they want, when and how they want it.

National Restaurant Association research shows that 70% of consumers customize their meals when eating in restaurants. This is the best example that consumers are the real drivers behind all restaurant food choices. It has and remains good business for restaurants to ensure that they offer the menu items and in-store product information demanded and used by consumers. A coordinated, voluntary industry effort can play a role as part of a larger overall battle against obesity.

Filling the “Educational Gap” as Most Effective Means for Influencing Consumer Purchasing Decisions

The National Restaurant Association believes that any successful effort to address the obesity issue in the United States today must first address education.

Without education, consumers will not know how to incorporate the foods or the myriad of information available to them into a healthy lifestyle. If they did, the Nutrition Labeling and Education Act (NLEA) of 1990 would have clearly impacted the significant public health issue we are still facing today. For years, the American public has been provided with more choices and more information about all the foods they eat at home and in restaurants. Yet, we have seen an increase in obesity rates. All of this information and all of these healthy choices have not proven to be the answer. Understanding these dynamics, members of the restaurant industry are committed to work with the Food and Drug Administration to develop new and more effective educational messages to consumers in appropriate settings.

The restaurant industry’s objective has always been to provide a wide variety of food options to accommodate the needs of diverse consumers. Americans must be informed over and over again that all foods can be part of a healthy lifestyle and a balanced diet. It is important that the FDA examines its role and responsibilities in addressing the public health problem of obesity, with the understanding that our diverse population needs recommendations that are clear and relevant to modern life. Consistent positive messages that promote healthier thinking and lifestyles will always be more successful. The restaurant industry believes it can play a valuable role in serving as a point of dissemination for consumer-focused general nutrition information in a meaningful way.

Developing an Effective Voluntary Program - - Misguided Reliance on Menu or Menu Board Labeling

The Association was encouraged by the range of options and possibilities discussed with regard to voluntary labeling during our December 2 meeting. However, we believe one option that was raised – pertaining to the display of all nutrition information on menus in chain restaurants – will not advance the goals underlying the challenges being taken up by the FDA Obesity Group, and therefore, is not supported by the National Restaurant Association. If implemented, this program would cover only a very small segment of the entire restaurant industry, severely limiting the program’s effectiveness and impact. We believe a program like this would totally miss the mark, and severely limit the effectiveness of a program designed to impact the foods an estimated 260 million Americans choose.

Quick service chain restaurants designed around the concept of customers' self-selection of ingredients such as sandwiches may be unable to comply with menu labeling in a non-confusing and accurate way. According to National Restaurant Association research, the make-up of a sandwich consisting of just five items or toppings (such as bread, meat, cheese, lettuce, tomato), can be ordered in 120 different ways. A sandwich comprised of 10 items or toppings could provide 3,628,800 combinations. Furthermore, an individual presented with 15 items for a sub or sandwich has 1.3 trillion possible combinations. As you can see, the possible sandwich combinations of breads, meats, condiments and toppings would make such a labeling scheme completely confusing to consumers and inaccurate for other. More confused consumers should never be the unintended consequence of well meaning ideas to better inform consumers.

In many restaurant settings it would be virtually impossible for a restaurant to accurately provide all the possible combinations on a menu board or menu. Everyone recognizes that ordering a meal in a restaurant is personalized. It is far different than buying a can of peas or packaged food. Because of variability and the ability to customize any food item on the spot, mandatory nutrition labeling in restaurants on menus or menu boards as suggested might be confusing and possibility inaccurate in many cases. Take, for example, the case of a beverage in a bottle, versus that same beverage in a cup with ice in restaurants. While the volume of the cup is a constant, the amount of ice dramatically affects the volume of the beverage served, hence the number of calories in the drink can vary by almost 50%. The addition of the ice is a human variable, the number of calories is almost never constant due to this variation. Therefore under any all item menu or menu board labeling proposal the majority of food could not be labeled accurately due to variability and the impossibility of providing all the possible combinations on any menu or menu board.

Clearly, no matter how consumers are to be informed of nutrition content in restaurants foods, only a selected or very limited number of menu items can be included in the nutrition content disclosure. Furthermore, we contend that due to severe space limitations, the voluntary nutritional disclosure method should be totally separate and apart from the menu or menu boards. However, we agree that some nutrition information should be available to those consumers that request it and those that are looking for different options.

Finally, smaller or single unit operators, which comprise nearly 70% of the restaurant industry, would have a very difficult time in providing nutritional information for all their menu items. Daily specials; produce and product availability; changing entrée components and chef experimentation may make providing nutritional information for all or most of the menu items more time consuming than preparing the meals themselves. However, again we believe that the voluntary plan of selecting a few menu items for certain or limited nutritional highlights or nutrition information in context, becomes much more adaptable and usable for all restaurants.

Inherent Variability in Nutrition Values of Restaurant Foods Forces Caution in Establishing Program Requirements

If a voluntary labeling program is contemplated by the FDA or industry, one major concern we have is liability. Due to the greater variability of restaurant prepared foods, the restaurant industry would need protections from nutrition disclosure liability and varying state nutrient disclosure rules. If a third party tests a declared menu item and finds nutrient levels are higher or lower than declared by the restaurant, protections to limit or prevent civil or criminal actions must be developed. With some liability protection, we believe many more restaurants would be willing to participate in a voluntary program.

A restaurant meal is very different from a packaged food in that it is not always the exact same size. If you purchase a can of beans, you get a can of beans (standard size, standard ingredients, etc). A restaurant meal can vary from chef to chef and from day to day. A restaurant cannot assure perfect consistency in recipes and portion sizes. In larger and presumably more sophisticated operations, a great deal of training and oversight is in place to ensure standard serving amounts and consistency of quality no matter where the product is made across the country (and across the world). However, a person, not a machine is spreading the mayonnaise. A restaurant simply cannot match the level of precision associated with a food manufacturing facility, producing standardized package foods prepared to exact specifications. Restaurant meals are prepared by people on the spot. It was this very reality that prompted Congress to exempt restaurant foods from the mandatory nutrition labeling requirements of the Nutrition Labeling and Education Act in 1990.

Restaurant meals or menu items are not highly-standardized as processed and packaged food products, nor should a voluntary or mandatory program require them to be so. Instead, as a result of having hundreds of thousands of food preparation workers across the country exercising discretion both about ingredients and about serving size, it is absolutely impossible even for the multi-unit operator to guarantee the total accuracy of nutrient analysis. In light of this reality, the National Restaurant Association is very concerned that a voluntary nutrition labeling program would either contemplate or imply the degree of accuracy of information consumers' associate with packaged food items where nutrition information is mandated.

Accordingly, it is imperative that under any voluntary program, FDA must clearly articulate its rationale for a regulatory standard by which the accuracy of nutrition-related information is generated. If restaurants are to be encouraged to make nutrition information accessible to patrons, it must do so against a backdrop of a regulatory "safe harbor" similar to that established under existing regulations governing the basis required for nutrient content claims made for restaurant items.

Finally, in the context of a voluntary program where calorie content or other information would appear on the menu board, consideration should be given to the subtle message the posting of information conveys to consumers. Beyond the practical execution of such an approach noted below, a statement of a fixed number of calories on a menu board could reasonably lead a consumer to expect that, like a packaged food, the menu item served contains that precise amount of calories. Menu labeling in this fashion may create expectations of accuracy that simply are not achievable in restaurants. Accordingly, it would be a disservice to the consumer for the FDA and the industry to establish a voluntary program that infers a level of accuracy that is simply not practical.

Consumer and Industry Data Collection

Sound public policy arises from solid judgments based on sound scientific evidence. There is much that remains unknown or elusive to FDA and others who contemplate the difficult issues of how best to influence consumer behavior in the selection of foods that comprise the human diet. As the National Restaurant Association conducts research, we are happy to share our findings with the FDA. In addition, we would commit to explore opportunities for further research on consumer preferences and choices that are made when purchasing and consuming foods away from home. In addition, we would be happy to help explore market based solutions and positive messages to help consumers make more informed decisions.

The industry has discussed this issue intensively over past months, making a great effort to focus not simply on what will not work, but on what will work. The National Restaurant Association is committed to providing resources and support as part of an ongoing effort to determine what will work. FDA in several contexts, including trans-fat labeling and presentation of qualified nutrient content claims, has committed itself to conducting consumer research as a means for informing the direction of public and regulatory policy. The Association is fully supportive of participating and supporting such efforts. We view such efforts as an important part of the Obesity Group's recommendations in its final report.

Voluntary Program That is Workable for All Restaurants

We agree with the Food and Drug Administration's suggestion of a voluntary nutrition information program for all restaurants. We believe that a simple, workable, standardized, uniform program would have a great many benefits for our restaurant guests. In developing this program, however, it is imperative that we adhere to some basic elements. We feel that such a program should be simple and easily adapted to all restaurant segments. In addition, this program should be one that does not try to fundamentally change the industry or the way customer demand is met by very different restaurant operators.

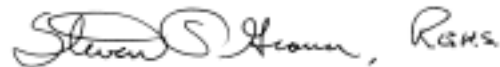
A voluntary program should recognize and allow for diverse consumer needs and not limit or eliminate consumer food choice for any particular menu items. We believe that the voluntary plan of selecting a few menu items for certain or limited nutritional highlights or nutrition information in context, becomes much more adaptable and usable for all restaurants. Finally, the program should be built upon positive and meaningful nutrition messages rather than negative stereotypes or blame. We feel that the greater the participation from the restaurant industry, the greater the impact a voluntary nutrition program and messages could have on consumers in our country. We look forward to cooperating with the Agency and helping to provide insight to the diverse nature of the restaurant industry and the consumers we serve.

Once again, we'd like to thank you for helping us to continue this dialogue with you and your colleagues. We believe that our communication on this important topic has set the stage for some valuable work ahead. Our shared commitment to nutrition and healthy lifestyles gives us many opportunities to work together in the near future, and we look forward to that.

Sincerely,



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